



**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503**

October 19, 1988

LEGISLATIVE REFERRAL MEMORANDUM

714 Narcotics
SPECIAL

TO: SEE ATTACHED DISTRIBUTION LIST

SUBJECT: Comparison of House and Senate Omnibus Anti-Drug bills.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with Circular A-19.

Please provide us with your views no later than

FYI -- Please provide corrections -- ASAP

Direct your questions to Gregory Jones (395-3454), of this office.

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**COMPARISON OF HOUSE AND SENATE OMNIBUS ANTI-DRUG BILLS -
H.R 5210 - AS PASSED BY THE HOUSE AND BY THE SENATE**

I. Criminal Justice/Law Enforcement Amendments

A. Money Laundering.

House Bill: Toughens the Bank Secrecy Act in various respects (e.g., by making it a criminal offense to engage in a prohibited transaction with the intention of evading income tax). In addition, undercover law enforcement officers would be permitted to pose as drug traffickers in order to obtain evidence to convict money launderers. Also strengthens the money laundering forfeiture statute and adds new criminal penalties for money laundering.

Senate Bill: Similar provisions. Also includes provision enhancing the undercover authorities of the IRS (e.g., by permitting the IRS to acquire or establish corporations or other businesses in connection with an undercover operation). Requires foreign banks to report certain U.S. currency transactions.

Administration Position: Generally support provisions of House and Senate bills but oppose foreign bank reporting requirements in Senate bill as unworkable and counterproductive.

B. Chemical Diversion and Trafficking.

House Bill: Establishes a comprehensive system for keeping track of "precursor" chemicals (i.e., chemicals that are used in the manufacture of illicit drugs). In general, requires persons engaged in transactions involving such chemicals to keep records of such transactions and to make them available when requested by the Department of Justice. The import and export of specified chemicals would be unlawful, unless they are intended to be used for a legitimate purpose.

Senate Bill: Similar provisions but technically superior (e.g., through tougher sanctions) and more workable than House version.

Administration Position: Support Senate version.

C. Asset Forfeitures.

House Bill: Creates statutory "innocent owner" defenses for the owners of conveyances able to demonstrate that they had no knowledge of drugs on their conveyances. Also creates an expedited petition process for mitigation

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or remission of certain forfeitures and provides that up to \$150 million in the Assets Forfeiture Fund may be used for certain specified purposes (e.g., diversion control programs under DEA and U.S. Attorneys).

Senate Bill: Requires Justice and Treasury to promulgate regulations for expedited administrative procedures for forfeitures involving the possession of "personal use quantities" of a controlled substance. Property would have to be returned if owner did not know or consent to the violation and the owner took reasonable steps to prevent illegal use of the property. Makes various other changes to Customs and Assets Forfeiture Funds. Also exempts equitable sharing payments and asset specific expenses from appropriations Acts.

Administration Position: Support Senate "innocent owner" provisions. Administration opposes budget treatment of equitable sharing payments and asset specific expenses.

D. State and Local Assistance and Related Matters.

House Bill: Makes various major and minor changes to the State and local grant program, especially changes to the grant pass-through formula. Also reauthorizes: the Bureau of Justice Statistics (\$30 million in for each of FY's 1989-1992); the National Institute of Justice (\$30 million for each of FY's 1989-1992); the Bureau of Justice Assistance grant program (\$100 million for each of FY's 1989-1992); the drug grant program (\$250 million for FY 1989 and \$500 million for each of FY's 1990-1992); and grants for State and local prison construction (\$25 million for each of FY's 1989-1992).

Senate Bill: Reauthorizes: the Bureau of Justice Statistics (\$21 million in FY 1989); the National Insitute of Justice (\$24 million for FY 1989); the Bureau of Justice Assistance (\$25.5 million for FY 1989); the drug grant program (\$275 million for FY 1989, \$350 million for FY 1990; and \$400 million for FY 1991); grants for State and local prison construction (\$15 million in FY 1989); the juvenile justice program ("such sums" for FY's 1989-1992); the runaway and homeless youth program ("such sums" for FY's 1989-1992); missing children's assistance ("such sums" for FY's 1989-1992); the Victims of Crime Act ("such sums" for FY's 1989-1992); and the State Justice Institute (\$15 million for FY 1989).

Makes many other changes, both major and minor, in these areas (e.g., by: substantially restructuring the juvenile justice program; clarifying the duties of the Bureau of Justice Statistics; authorizing "transitional living projects" in the runaway and homeless youth program;

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authorizing grants to State and local criminal justice agencies involving regional information sharing; increasing benefits payable under the Public Safety Officers Benefit program; and authorizing grants to improve the accuracy of criminal history information).

Administration Position: Support some of the reauthorizations (e.g., the Bureau of Justice Statistics, crime victims assistance, and missing children's assistance) but oppose others (e.g., State Justice Institute). Restructuring of juvenile justice program considered objectionable. Justice says that the Senate bill is less troublesome than the House version. Administration has consistently proposed zero funding for some of these programs (e.g., juvenile justice); however, funds have been appropriated each year and are appropriated for FY 1989. Also, see XI, "Funding."

E. Appropriation Authorizations for Drug Enforcement Personnel.

House Bill: Authorizes appropriations for various drug-related activities of the Justice Department (e.g., DEA, Prisons, and U.S. Attorneys) totalling \$2.8 billion for FY 1989.

Senate Bill: Authorizes appropriations (\$0.9 billion for FY 1989) for various agencies with drug-related responsibilities (e.g., INS; BATF; DEA; FBI; the Marshals Service; Federal Prison System; U.S. attorneys; and the Federal judiciary).

Administration Position: See XI, "Funding."

F. Firearms.

House Bill: Makes it a criminal offense to travel in interstate commerce and attempt to purchase a firearm in pursuance of certain specified criminal activity. Also requires Justice to develop a plan for a system for the rapid identification of felons in connection with hand gun sales. Justice would be required to report to Congress within 180 days on its proposed system.

Senate Bill: Makes it a criminal offense to transfer or possess a firearm in an elementary or secondary school. Provides for enhanced penalties for use of firearms in connection with certain violent crimes or drug trafficking crimes. Makes it a criminal offense to possess a firearm in specified "Federal facilities." Bans so-called "plastic guns."

Administration Position: Senate bill is closer to Justice's proposals of earlier this year. The study

called for by the House bill was adopted as an alternative to the so-called "Brady amendment," which would require a 7-day waiting period before the purchase of a handgun. Support Senate bill.

G. Death Penalty.

House Bill: Permits the imposition of the death penalty in certain particularly serious drug-related cases in which death results, subject to certain limitations and restrictions (e.g., a prohibition on imposing the death penalty on a mentally retarded person).

Senate Bill: Similar provisions but considered preferable to House version (e.g., because of a better appeals mechanism). Senate bill was modified during floor consideration to be more like the House bill (e.g., by the addition of provisions concerning providing counsel for persons accused of capital crimes and prohibiting the imposition of the death penalty on a mentally retarded person).

Administration Position: The Administration supports enactment of the death penalty for appropriately serious crimes. Senate bill is preferable.

H. Exclusionary Rule.

House Bill: Establishes a statutory "good faith" exception to the exclusionary rule for searches conducted with warrants and without warrants.

Senate Bill: Similar but requires, unlike the House bill, that the search have been carried out in reasonable reliance on a search warrant issued by a detached and neutral magistrate.

Administration Position: The Administration supports the House bill.

I. Agency Law Enforcement Authorities.

House Bill: Clarifies and enhances the law enforcement authorities of the Postal Service, the Forest Service, the Bureau of Land Management, and the National Park Service (e.g., by permitting Postal Service investigative personnel to carry firearms in certain situations). Also requires that an existing annual report to Congress by the President on efforts to prevent the entry of controlled substances into U.S. territories and insular areas be submitted by October 1st of each year; prohibits expenditure of funds for Interior's Office of Territorial and International Affairs if report is not submitted on time.

Senate Bill: Somewhat similar provisions but limited to the Postal Service and Forest Service. Does not contain Interior funding cut off provision.

Administration Position: Generally support House bill but oppose provision prohibiting expenditure of funds for failure to file report on time.

J. Marshals Service.

House Bill: Establishes the Marshals Service by statute in Justice and clarifies its authorities. Makes the Director of the Marshals Service a Presidential appointee, subject to confirmation by the Senate; U.S. Marshals to be appointed by the Attorney General.

Senate Bill: Similar provisions but Marshals to be appointed by the President, consistent with current law.

Administration Position: Support.

K. DEA-EPA Task Force.

House Bill: Establishes a joint DEA-EPA task force to formulate and implement a program for the cleanup and disposal of hazardous waste produced by illegal drug laboratories. \$5 million is earmarked for the Task Force.

Senate Bill: Similar provisions. Authorizes appropriations of \$5 million for FY 1989 for the Task Force.

Administration Position: Support House bill.

L. Drug Czar.

House Bill: Establishes the Office of Drug Enforcement Coordination in the EOP and abolishes the National Drug Policy Board. Functions limited to law enforcement matters.

Senate Bill: Establishes the Office of National Drug Control Policy in the EOP and abolishes the National Drug Policy Board and the White House Drug Abuse Policy Office. Functions include all drug-related activities (i.e., law enforcement, education, rehabilitation, and the like). Would permit drug czar to attend meetings of the NSC but (unlike earlier version) would not make czar a statutory member of NSC.

Administration Position: The Administration believes that organizational questions of this nature should be

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deferred until the new President has taken office and has had an opportunity to make his own recommendations. Intelligence exemption in the Senate bill should be broadened.

M. Civil Penalties.

House Bill: Authorizes the imposition of civil penalties against persons possessing small amounts of specified illicit drugs.

Senate Bill: Similar provisions but technically superior.

Administration Position: Support Senate bill.

N. Schools and Minors.

House Bill: No provision.

Senate Bill: Contains several provisions intended to protect children from drug trafficking (e.g., by enhancing existing penalties for drug offenses involving children and by making it a criminal offense to possess illegal drugs with intent to distribute within 1,000 feet of a schoolyard).

Administration Position: Support Senate bill.

O. Public Corruption.

House Bill: No provision.

Senate Bill: Makes it a criminal offense for a public official (including State officials) to accept or seek anything of value in return for being influenced in the performance of his or her official duty. It would also be an offense to offer anything of value in return for such influence. Other provisions would make it a criminal offense to deprive or attempt to deprive the citizens of the United States, or of a State, of the honest services of elected or appointed officials. (These latter provisions would overturn the Supreme Court's decision in McNally v. United States, which prohibited the Government from using the mail fraud statutes in public corruption cases.)

Administration Position: Support Senate bill.

P. Minor and Technical Criminal Law Amendments

House Bill: No provision.

Senate Bill: Contains a series of about 100 criminal law

amendments characterized as "minor and technical." Many of these would correct cross references, correct typographical errors in previously-enacted legislation, redesignate certain provisions, and the like. Others are more substantive, such as those that would: authorize Federal Prison Industries to borrow from the Treasury to finance new construction; impose limitations on the furlough of persons hospitalized who have been found not guilty of a crime by reason of insanity; make it unlawful to use the term "Secret Service" without authorization; create a new offense for obstruction of a Federal audit; and make several additional offenses (e.g., sexual exploitation of children) predicate offenses under the Racketeer Influenced Corrupt Organization statute.

Administration Position: Support Senate bill.

Q. Sentencing Amendments.

House Bill: No provision.

Senate Bill: Includes a series of provisions that affect the United States Sentencing Commission (e.g., permitting the Commission to hire outside counsel to represent the Commission in any proceeding in which the Commission is authorized to represent itself and giving the Commission authority to grant incentive awards to its employees). Also establishes procedures for handling of persons received from foreign countries who are on parole from sentences imposed by those countries.

Administration Position: No objection to Senate bill.

R. Reimbursement to State and Local Law Enforcement Agencies.

House Bill: No provision.

Senate Bill: Requires reimbursement to State and local law enforcement agencies whenever such an agency provides information to the IRS that "substantially contributes" to the recovery of Federal taxes.

Administration Position: Oppose Senate provision.

S. Drug Testing of Criminal Defendants or as a Condition of Parole and Related Matter.

House Bill: Includes demonstration program of mandatory drug testing for criminal defendants.

Senate Bill: Requires mandatory drug testing at least every 60 days for all persons on probation or supervised release in connection with specified offenses and

includes sanctions (e.g., house arrest) for those who test positive. Revokes probation, parole, or supervised release if defendant is found in possession of a controlled substance.

Administration Position: Support.

T. Prison-Related Amendments.

House Bill: No provision.

Senate Bill: Amends the laws concerning drugs in Federal prisons in various respects (e.g., by increasing from five to 20 years the maximum sentence for distributing drugs within a prison). Also, the Justice Department would be required to study the feasibility of requiring prisoners to pay for the costs of their incarceration.

Administration Position: Support Senate provisions.

U. Violent Criminal Deportation.

House Bill: No provisions.

Senate Bill: Among other provisions dealing with aliens and drug trafficking, requires the retention in custody without conditional parole of any alien committing an aggravated felony. Requires the prompt deportation of such persons. Permits an alien proposed for deportation to petition for relief to stay deportation.

Administration Position: Support Senate bill; however, petition process is unnecessary.

V. National Advisory Commission on Law Enforcement.

House Bill: No provision.

Senate Bill: Creates an advisory body to study pay other benefits of law enforcement officers in Federal agencies to determine what inequities, if any, exist in pay between agencies and the effect of various pay scales on recruiting and retaining law enforcement personnel.

Administration Position: Oppose Senate bill as duplicative of OPM's authorities in this area.

W. Habeas Corpus.

House Bill: No provision.

Senate Bill: Requires Congress to consider legislation during the 101st Congress to reform Federal habeas corpus procedures.

Administration Position: No objection to Senate provision; however, the Administration would prefer enactment of habeas corpus reform legislation without further delay.

X. Protection of Former Federal Officials.

House Bill: No provision.

Senate Bill: Amends the Federal criminal assault statute to include certain former Federal officials, as well as members of their families (i.e., to make it an offense to assault such persons).

Administration Position: Support.

Y. Uniform Crime Reports.

House Bill: No provision.

Senate Bill: Requires uniform reporting to the Justice Department by other Federal agencies on crimes committed within their jurisdictions and authorizes \$350,000 for that purpose for FY 1989.

Administration Position: No objection. See also, XI, "Funding."

Z. GAO Study of Criminal Penalties.

House Bill: No provision.

Senate Bill: Requires GAO to conduct a study to determine the impact of new or enhanced criminal penalties and of additional resources for the Federal criminal justice system, with a view toward the development of a model to be used in determining appropriate budget and staffing levels.

Administration Position: No objection.

AA. Crime Victims Fund.

House Bill: No provision.

Senate Bill: Provides that after sums in the Crime Victims Fund reach \$110 million, the next \$2.2 million shall be made available to the Judiciary for specified purposes.

Administration Position: No objection.

II. Interdiction Amendments

A. Coast Guard Provisions.

House Bill: Authorizes appropriations for the Coast Guard of: \$264 million for FY 1989 for acquisition, construction, and improvements; and \$82 million for FY 1989 and \$30 million for each of FY's 1990-1992 for operating expenses. Requires the Transportation Department to establish a vessel identification system.

Senate Bill: Authorizes appropriations for the Coast Guard of: \$68 million for FY 1989 for acquisition, construction, and improvements; and \$16.4 million for FY 1989 for operating expenses.

Administration Position: See XI, "Funding."

B. Federal Aviation Administration Amendments.

House Bill: Authorizes the FAA to modify its aircraft registration system, its system for issuing airman's certificates, and related systems to make them more effective in drug law enforcement. Establishes criminal penalties for false marking of aircraft and similar acts. Provides the FAA with limited concurrent budget submission authority, a legislative bypass, and limited exemption from Paperwork Reduction Act.

Senate Bill: Increases penalties for importation of controlled substances by aircraft.

Administration Position: Senate bill is preferable because of highly objectionable concurrent budget submission requirement and Paperwork Reduction Act provisions in House bill.

C. Customs Service Amendments.

House Bill: Authorizes appropriations for FY 1989 for Customs, as follows: \$417 million for noncommercial operations; \$622 million for commercial operations; \$197 million for air operations; and \$15 million for an x-ray scanning device. Also makes various other Customs-related amendments (e.g., an increase in the penalty for failure to declare a controlled substance).

Senate Bill: Authorizes appropriations for FY 1989 for Customs, as follows: \$441 million for noncommercial operations, \$26 million of which is to be used to fund at least 435 inspectors for intensive cargo examinations \$142 million for air operations; \$1.6 million for payment to the Customs Cooperation Council; an additional \$57 million for the air program; \$7 million for a machine-readable travel and identity document border

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security program; and \$4 million for an x-ray scanning device. Also makes various other Customs-related amendments (e.g., establishing procedures for the reconciliation of inconsistent decisions made by Customs officers regarding the treatment of merchandise imports).

Administration Position: See XI, "Funding."

D. Air Carrier Smuggling Provisions

House Bill: Establishes a demonstration program at at least three high-risk U.S. international airports for which Treasury would approve air carrier inspection practices. Participating carriers would not be subject to penalty if illegal drugs are found aboard their aircraft unless Treasury proves that the carriers willfully, or because of gross negligence, failed to comply with applicable procedures.

Senate Bill: Similar to House bill, except that Treasury would approve security and inspection practices at U.S. and foreign airports and penalty would be waived only if the participating carrier establishes that it was not grossly negligent nor engaged in willfull misconduct, and that it complied with applicable procedures.

Administration Position: Oppose, because provisions would not hold air carriers responsible for illegal drugs found on board aircraft. Could support if compliance with applicable procedures was considered a mitigating factor during the administrative forfeiture proceeding.

III. Transportation Provisions

A. Drunk Driving Grant Program.

House Bill: Authorizes appropriations (\$25 million in FY 1989, and \$50 million each of FY's 1990 and 1991) for grants to help States implement drunk driving enforcement programs.

Senate Bill: Similar provisions.

Administration Position: Oppose.

B. Suspension of Drivers Licenses.

House Bill: Authorizes appropriations (\$25 million in FY 1989 and \$50 million in each of FY's 1990 and 1991) for grants to States that suspend the drivers licenses of persons convicted of drug-related criminal offenses.

Senate Bill: No provision.

Administration Position: Oppose House provisions.

C. Common Carrier Offenses.

House Bill: Increases the criminal penalties for operating a common carrier (e.g., a passenger train) while under the influence of alcohol or drugs.

Senate Bill: Similar provision.

Administration Position: Support.

D. Drug Testing in Transportation Industry.

House Bill: No provision.

Senate Bill: Requires DOT to promulgate regulations mandating alcohol and drug testing for certain employees in the transportation industry in safety-sensitive positions. Requires UMTA to withhold funds from transit authorities that do not implement alcohol and drug testing programs. Requires common carriers and affected DOT modal agencies (e.g., the FAA) to establish rehabilitation programs meeting certain specified criteria for employees with substance abuse problems. Provides that any requirements established by DOT be consistent with any applicable international obligations of the United States.

Administration Position: Oppose mandated rehabilitation programs. DOT should retain the flexibility to tailor drug testing requirements in the transportation industry. Oppose mandatory broad testing for alcohol, because alcohol should be treated separately.

E. Drug Testing for Drivers License Applicants.

House Bill: No provisions.

Senate Bill: Authorizes certain States to receive Federal highway funds to conduct a one-year pilot program for drug testing of drivers license applicants. Requires DOT to report on results.

Administration Position: No position.

IV. International Provisions

A. Latin American Regional Anti-Narcotics Force and Related Provisions.

House Bill: Directs the President to seek the views of the OAS with respect to establishment of a Latin American Regional Anti-Narcotics Force and directs DOD to provide

assistance for the force, if established. Authorizes appropriations for such purpose of \$10 million for FY 1988 [sic].

Senate Bill: Similar provision but does not contain DOD/appropriation authorization provisions. Contains a related provision calling upon the United Nations to explore ways to establish an international force aimed at stopping trafficking in illegal drugs. Also contains a "sense of the Senate" provision that the President should begin discussions with other countries over the advisability of establishing an international criminal narcotics court.

Administration Position: No objection.

B. Authorizations and Earmarkings of Foreign Assistance.

House Bill: Authorizes appropriations of \$101 million for FY 1989 for international narcotics control assistance, earmarks some of these funds for specified activities (e.g., \$500,000 for herbicide testing) and authorizes supplemental appropriations to complement existing appropriations.

Senate Bill: Similar provisions (including \$101 million appropriation authorization).

Administration Position: Earmarks are objectionable. Also, see XI, "Funding."

C. Specific Country Provisions.

House Bill: Contains provisions directed at certain source countries (i.e., Bolivia, Mexico, Peru, Columbia, Pakistan, Laos, and Afghanistan). For example, no United States assistance may be furnished to Laos if the President determines that the government of that country is involved in drug trafficking.

Senate Bill: Earmarks \$5 million for the Government of Columbia to provide protection for judges, government officials, and members of the press.

Administration Position: Oppose House and Senate bills.

D. Annual Reports/Certifications and Miscellaneous Assistance Provisions.

House Bill: Makes various changes in reports furnished by the Executive branch to Congress regarding foreign assistance and international drug trafficking. Also directs the President to take reasonable steps to ensure that assistance under the Arms Export Control Act and the

Foreign Assistance Act of 1961 is not provided to drug traffickers.

Senate Bill: Contains related provisions.

Administration Position: Oppose, especially provisions that would add further criteria to the list of conditions that the President must consider before certifying that a drug producing or drug transit country has fully cooperated with the United States or has taken adequate steps on its own to curb the production of and trafficking in illegal drugs. Interferes with President's executive authority and constitutes congressional micromanagement.

E. Department of State Provisions.

House Bill: Makes State responsible for coordinating assistance provided by the United States in support of efforts to combat international narcotics production and trafficking. Permits denial or revocation of passports of certain convicted drug traffickers. Permits the stamping of passports to indicate that holders have been convicted of drug offenses.

Senate Bill: Permits revocation of passports for certain specified drug violations. Requires that as a condition of receiving assistance that the Secretary of State certify that the country has not misused U.S. equipment or aircraft.

Administration Position: Generally no objection; oppose Secretary of State certification requirement as micromanagement of the Executive branch.

F. Export-Import Bank/Multilateral Development Bank Provisions.

House Bill: Permits the ExIm Bank to guarantee or insure a sale of defense articles for certain foreign anti-narcotics efforts. Directs the Treasury to discuss with other members of multilateral development banks (e.g., the World Bank) the possibility of establishing lending programs for developing countries that would reduce the dependence of such countries on illicit drug production and trafficking.

Senate Bill: No provision.

Administration Position: No objection to House provisions.

G. Information on Illegal Foreign Drug Activities.

House Bill: Requires that any employee of the Federal Government, who in the course of his or her duties obtains information about illegal foreign drug activities, to report such information to the head of the agency designated for that purpose by the President.

Senate Bill: No provisions.

Administration Position: Oppose. Unnecessary; constitutes inappropriate congressional micromangement.

V. Education Provisions

A. Youth Gangs.

House Bill: Authorizes new grants for discouraging participation of youth gangs in drug-related activities. Authorizes appropriations of \$30 million for FY 1989.

Senate Bill: Similar provisions. Authorizes \$40 million for FY 1989.

Administration Position: See XI, "Funding."

B. National Youth Sports Program.

House Bill: Authorizes new grants for a national youth sports program for disadvantaged youth. Authorizes appropriations of \$15 million for FY 1989, \$17 million for 1990, and \$20 million for FY 1991 for such program.

Senate Bill: No provision.

Administration Position: See XI, "Funding."

C. Juvenile Justice/Runaway Youth.

House Bill: Authorizes new grants for various anti-drug education programs targeted at juveniles and authorizes appropriations totalling \$45 million for FY 1989. Also authorizes new grants for projects to discourage drug use among runaway and homeless youth and authorizes appropriations of \$15 million for FY 1989 therefor.

Senate Bill: No provision.

Administration Position: See XI, "Funding."

D. Drug Abuse Education for Participants in the Special Supplemental Food Program for Women, Infants, and Children.

House Bill: Authorizes appropriations of \$10 million for FY 1989 for a study of appropriate methods of drug abuse

education for persons participating in this program.

Senate Bill: No provision.

Administration Position: See XI, "Funding."

E. Volunteer Demonstration Projects for Drug Abuse Education.

House Bill: Authorizes appropriations of \$5 million for each of FY's 1989-1991 for new community-based volunteer demonstration projects that provide comprehensive drug abuse education to youths during the summer months.

Senate Bill: Amends the Domestic Volunteer Service Act by authorizing an additional \$4 million for FY 1989 to be available for drug abuse prevention efforts.

Administration Position: See XI, "Funding."

F. Employee Assistance Programs.

House Bill: No provision.

Senate Bill: Directs the Secretary of Labor to establish employee drug and alcohol abuse assistance programs. Authorizes \$4 million in FY 1989 for this purpose.

Administration Position: See XI, "Funding."

G. Drug-Free Schools.

House Bill: No provision.

Senate Bill: Amends the Drug-Free Schools and Communities Act to provide authorizations of \$405 million for FY 1989 for drug abuse education efforts including establishment of regional centers, outreach activities for dropouts, and counselling and referral services for families of drug abusers. Also authorizes \$16 million for FY 1989 for teacher training programs. Directs the Secretary of Education to develop age-appropriate drug abuse prevention curriculum materials.

Administration Position: Many of the Senate amendments, in addition to providing excessive authorization levels, unnecessarily complicate and confuse the drug prevention education effort. The addition of new authorities, complex lines of authority, duplicative national versus State programs, and the like, combine to make it less likely that an effective, coherent drug prevention education strategy will result.

VI. Rehabilitation and Treatment

A. AIDS Grant Program.

House Bill: Authorizes a new grant program for States to establish and operate programs for discouraging and treating intravenous drug abusers. Authorizes appropriations of \$250 million for this purpose for FY 1989.

Senate Bill: Authorizes \$95 million for FY 1989 to establish grants to States (and Puerto Rico) for projects designed to reduce the transmission of the AIDS virus in and by users of illegal intravenous drugs.

Administration Position: See XI, "Funding."

B. Alcohol and Drug Abuse Prevention, Treatment, and Rehabilitation Grant Program.

House Bill: Authorizes grants to States for planning and establishing programs for the prevention and treatment of drug and alcohol abuse. Authorizes appropriations of \$475 million for this purpose for FY 1989. Includes numerous set-aside provisions.

Senate Bill: Authorizes grants to States for planning and establishing programs for the prevention and treatment of drug and alcohol abuse. Authorizes appropriations of \$929 million for this purpose for FY 1989.

Administration Position: See XI, "Funding." The Administration does not support provisions that would shift grant authorities from block grants back to restrictive categorical grants or attach conditions to Federal grants that are unrelated to the purposes of the grants.

C. Mental Health Services.

House Bill: Authorizes grants to States to plan and provide community mental health services. Authorizes appropriations of \$350 million for this purpose for FY 1989. Includes numerous set-aside provisions.

Senate Bill: Similar provisions. Authorizes appropriations of \$700 million for FY 1989. Five percent is to be specifically targeted to programs for women. Includes numerous set-aside provisions.

Administration Position: See XI, "Funding." The Administration does not support provisions that would shift grant categories from block grants back to restrictive categorical grants or attach conditions to Federal grants that are unrelated to the purposes of the

grants.

D. Counseling and Testing With Respect to AIDS.

House Bill: Provides that financial assistance may not be provided for AIDS counseling and testing unless the recipient agrees to ensure the confidentiality of information and records obtained. Requires that the recipient of assistance agree that, before testing a person for AIDS, such person receive certain specified information (e.g., measures for preventing the transmission of AIDS). Establishes numerous other requirements relating to AIDS testing and counseling, including standards for Federal certification of laboratories engaged in drug testing.

Senate Bill: No provision.

Administration Position: Unknown.

E. Grants for Reducing Waiting Period for Drug Abuse Treatment.

House Bill: Authorizes a one-time appropriation of \$100 million for FY 1989 to expand the capacity of state and local governments to treat drug abusers. The President's FY 1989 budget does not request funds for this activity.

Senate Bill: No provision.

Administration Position: See XI, "Funding."

F. Funding for Office of Substance Abuse Prevention.

House Bill: Authorizes appropriations of \$75 million for FY 1989 for the Office of Substance Abuse Prevention and High Risk Youth demonstration projects.

Senate Bill: Similar provisions. Authorizes appropriations of \$91 million for FY 1989.

Administration Position: See XI, "Funding."

G. Mental Health Demonstration Projects.

House Bill: Authorizes appropriations of \$32 million for each of FY's 1989 and 1990 for new demonstration projects to provide prevention services to the chronically mental ill and persons thought to be at risk of developing mental illness.

Senate Bill: Authorizes \$60 million for FY 1989 (18% of which is for the homeless) for Mental Health Service grants and demonstration projects targeted at mentally

ill individuals, for suicide prevention, for those with depressive disorders, post legal adoption mental health counselling, and sex offense treatment and prevention.

Administration Position: See XI, "Funding."

H. Drug Abuse Treatment Demonstration Projects.

House Bill: No provision.

Senate Bill: Authorizes \$24 million for FY 1989 for demonstration projects providing drug treatment to adolescents, minorities, pregnant women, female addicts and their children, and residents of public housing projects.

Administration Position: See XI, "Funding."

I. Alternative Utilization of Military Facilities for Drug Treatment.

House Bill: No provision.

Senate Bill: Directs the Director of the National Institute on Drug Abuse to work with the Commission on Alternative Utilization of Military Facilities to identify potential space for drug treatment programs for nonviolent persons.

Administration Position: Unclear.

J. Data Collection/Technical Assistance.

House Bill: Data collection incorporated into the block grant provisions. No provision for technical assistance beyond levels currently provided by ADAMHA/HHS.

Senate Bill: Authorizes \$12 million for new evaluations of substance abuse education and prevention efforts. Evaluation of prevention activities currently funded through the Office of Substance Abuse Prevention annual appropriation of \$34 million for FY 1989. Authorizes \$15 million for technical assistance to States operating or establishing drug abuse prevention and treatment programs. Authorizes \$33 million for new data collections on drug, alcohol, and mental health services, treatment and incidence of abuse and illness.

Administration Position: See XI, "Funding."

K. Labelling of Alcoholic Beverages.

House Bill: No provision.

Senate Bill: Makes it unlawful, beginning 12 months after enactment, to manufacture, bottle, or import any alcoholic beverage unless the container of such beverage contains a specified statement (viz., that: (1) the Surgeon General has determined that women should not drink alcoholic beverages during pregnancy; and (2) consumption of such beverages impairs one's ability to drive a car or operate machinery and may cause health problems).

Administration Position: Enactment of such a provision is premature, pending the outcome of on-going BATF studies in this area.

L. National Commission and Conference on Measured Responses to Achieve a Drug-Free America by 1995.

House Bill: No provisions.

Senate Bill: Establishes a National Commission, to be chaired by the Drug Czar, to develop a uniform code of State laws that represents a "measured response" to achieve a drug-free America by 1995. Requires the President to call a National Conference to consider the uniform code developed by the Commission. States that it is the "declared policy of the United States Government to create a Drug-Free America by 1995."

Administration Position: Oppose; such a Commission and Conference are unnecessary.

M. Lease-Purchase Authority for Public Health Service Buildings.

House Bill: No provisions.

Senate Bill: Authorizes, notwithstanding any other provision of law, HHS to enter into lease-purchase contracts, for periods not to exceed 30 years, for the acquisition by lease of buildings and facilities needed by the Public Health Service. HHS's authority would be limited to amounts or the extent provided in advance in appropriations Acts.

Administration Position: Oppose. Lease-purchase authority is contrary to Administration policy, as it could, among other things, lead to a costly proliferation of Federal buildings.

VII. Drug-Free Workplaces

A. Drug-Free Workplace Requirements.

House Bill: Requires Federal Government contractors and

grantees to establish drug-free workplaces meeting specified criteria (e.g., by setting up a drug-free awareness program). Those who fail to comply may be suspended, terminated, or debarred, as appropriate. Creates new debarment and suspension procedures. Limited waivers are available for individual contracts and grants.

Senate Bill: Similar provisions; however, would only apply to contracts of more than \$25,000. In addition, would use existing suspension and debarment procedures, rather than establish new ones involving Boards of Contract Appeals. Any requirements established must be consistent with any applicable international obligations of the United States.

Administration Position: Support general thrust of both bills but Senate bill is preferable, because it allows for exemption for contracts under \$25,000. At least two additional amendments are needed, however. First, bill should be amended to permit waiver authority (currently limited to agency heads) to be extended to entire classes of contracts and grants, rather than only to individual contracts and grants. If this is not feasible, bill should be amended to make waiver authority delegable. Bill should also be amended to clarify relationship between these requirements and drug-free workplace requirements in the Treasury-Postal Appropriations Act (i.e., by stating explicitly that "compliance with the provisions of this subtitle by January 16, 1989, shall satisfy the requirements of section 628 of the Treasury-Postal Service Appropriations Act (P.L. 100-440)").

B. Employee Sanctions.

House Bill: Requires that a grantee or contractor take appropriate personnel action against employees convicted of drug violations.

Senate Bill: Identical provisions.

Administration Position: Support.

VIII. Drug-Free Housing

A. Clearinghouse on Drug Abuse in Public Housing.

House Bill: Directs HUD to establish such a clearinghouse. Also requires HUD to establish a regional training program for public housing officials to combat drug abuse in public housing.

Senate Bill: No provision.

Administration Position: Oppose House provision.

B. Drug-Related Crime in Public Housing.

House Bill: Authorizes grants to public housing authorities to combat drug abuse-related crime in public housing.

Senate Bill: Similar grant provision (authorizes \$8.2M for 1989). Also provides that criminal activity shall be grounds for termination of public housing tenancy. Authorizes the hiring of individuals to investigate drug use and trafficking in public housing.

Administration Position: Support termination provision. Also, see XI, "Funding."

IX. Denial of Benefits

House Bill: In general, denies certain Federal benefits (e.g., eligibility for contracts, grants, and loans) with respect to any person convicted of drug trafficking or twice convicted of simple possession of illegal drugs.

Senate Bill: Similar provisions but more limited in scope.

Administration Position: Support Senate provisions.

X. Miscellaneous Amendments

A. Child Pornography.

House Bill: No provisions.

Senate Bill: Contains a comprehensive set of provisions designed to crack down on child pornography and obscene materials (e.g., through: a prohibition on the buying and selling of children; the establishment of specified recordkeeping requirements for producers of certain sexually explicit materials; and a prohibition on the transmission of obscene material on cable television).

Administration Position: Support. These provisions are based in large measure on an Administration proposal.

B. Diplomatic Immunity.

House Bill: No provision.

Senate Bill: Tightens up the rules regarding diplomatic immunity in several respects. For example, whenever there is "probable cause" to suspect that a person with diplomatic immunity from prosecution under the criminal

laws of the United States "may have committed a serious criminal offense," State would be required immediately to expel from the United States (or seek a waiver of immunity with respect to) the person involved. State would also be required to establish by regulation requirements with which foreign missions in the United States would have to comply for obtaining adequate liability insurance to afford adequate compensation for injuries to persons injuries resulting from the operations of such missions.

Administration Position: Strongly oppose Senate bill, which would invite retaliation against U.S. diplomats abroad and would interfere with the President's constitutional authority to conduct foreign relations on behalf of the United States.

C. Fitness for Duty Requirements for Department of Energy and Nuclear Regulatory Commission Nuclear Programs.

House Bill: No provisions.

Senate Bill: Requires DOE and NRC to promulgate regulations for drug testing of persons in safety-sensitive positions in nuclear facilities under the jurisdictions of the two agencies. Mandates rehabilitation programs for employees who test positive.

Administration Position: Oppose. See III.D, above, for details.

D. Debt Collection.

House Bill: No provisions.

Senate Bill: Reforms and revises Federal debt collection practices and procedures in a thorough and comprehensive manner.

Administration Position: Strongly support. (This is an Administration initiative.)

XI. Funding

A. Totals.

House Bill: Authorizes appropriations of \$2.1 billion in budget authority (\$1.1 billion in outlays) over 1989 appropriated levels but provides no offsets or new revenues to pay for the bill.

Senate Bill: Authorizes appropriations of \$2.5 billion in budget authority (\$1.5 billion in outlays) over 1989 appropriated levels. It also fails to provide offsets.

It does, however, contain a "sense of the Congress" provision stating that additional revenues generated by IRS agents and U.S. Attorneys should be used to pay for the bill. The sense of Congress provision also states that obligations should be limited to avoid triggering a G-R-H sequester, and that total authorizations in the bill and subsequent FY 1989 appropriations should dedicate 60 percent of the funds to demand reduction and treatment, and 40 percent to drug law enforcement programs. (The House bill has a 33-67 split.)

Sense of the Congress resolution goes on to state that: (1) Congress intends to provide full funding for all of the anti-drug programs contained in the bill; and (2) by May 1, 1989, Congress intends to provide sufficient monies to pay for the legislation through program reductions, revenue increases, or a combination thereof.

Administration Position: Any additional appropriations for anti-drug programs must be consistent with the Bipartisan Budget Agreement and must meet G-R-H deficit reduction targets. The October 15th G-R-H report issued by OMB stated that any appropriations in excess of \$545 million for the remainder of FY 1989 will result in a deficit that exceeds the deficit reduction target of \$146 billion.

LEGISLATIVE REFERENCE DIVISION DRAFT
10/18/88 -- 5:30 P.M.